REMARKS

Claim Rejections – 35 U.S.C § 112, ¶ 2

Claims 1-5 were rejected under 35 U.S.C. §112, ¶2, as being indefinite. In particular, the examiner alleges that claim 1 is indefinite because the purpose or use of the invention is not claimed.

The primary purpose of requiring the claims to particularly point out and distinctly claim the invention is to ensure that the scope of the claims is clear; that the claim meets the threshold requirements of clarity and precision. *See* M.P.E.P. § 2173; §2173.02. A broad claim is not the same as an indefinite claim. *See* M.P.E.P. § 2173.04. Where the scope of the claim is clear and there is no contrary indication that an applicant intended the scope to be different from that claimed, then the claim complies with 35 U.S.C. § 112, ¶2. *Id.*

The examiner has not indicted, what if anything is unclear about the claim language of claims 1-5. Thus, it appears as if the rejection is based on breadth, which is not a sole basis for rejecting the claims. As such, reconsideration is requested.

Claim Rejections – 35 U.S.C. § 102(b)

Independent claim 26 was rejected under 35 U.S.C. §102(b) as being anticipated by Merkin.

Claim 26 calls for and operating system including a plurality of interfaces to equipment of a corresponding plurality of types, one of which is a first predetermined type, and including a driver ID demander, and a wizard including a common driver which, when identified to the driver ID demander satisfies the driver ID demander's requirement to identify one of the plurality of interfaces.

The examiner has failed to show where the operating system in Merkin demands the identification of one of a plurality of interfaces, and a common driver that satisfies this demand when it is identified to a driver ID demander.

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For example, in Merkin the user must specify a source disk drive in which the device driver program is to be found. Column 5, lines 14-65. The source drive may be one that supports a removable medium. *Id. See also* column 5, line 5-column 6, line 1. Thus, the device driver program may be on a floppy disk. Because the user is required to identify the disk drive unit where the device driver program is found before .IDP files (installation data profile) can be located, it is submitted that the identification of the source drive and not the location of .IDP files satisfies the general installation utility's request for specification of the source. That is, the source drive for the driver program to be installed is located in response to the request of Merkin's general installation utility. Accordingly, Merkin fails to anticipate claim 26 and claims dependent thereon. Reconsideration of the rejection is requested.

Claim Rejections – 35 U.S.C. § 103

Claim 1 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Merkin in view of Asselin. The combined teachings of Merkin and Asselin do not render claim 1 obvious. In other words, *prima facie* obviousness has not been established with respect to claim 1.

Claim 1 calls for receiving a request to select one of a plurality of available system elements to be installed, receiving an identification of a first system element which is not of the plurality of available system elements, installing the first system element, deinstalling the first system element, and installing the one of the plurality of available system elements.

Pursuant to the Office action, Merkin fails to disclose the identification of a first system element which is not of the plurality of available system elements, installing the first system element and deinstalling the first system element. Office action, page 5, ¶ 19. As such, the examiner relies on Asselin to cure the deficiencies of Merkin. The examiner asserts that one would be motivated to combine the teachings of Merkin and Asselin "because it provides a method to install the correct element that is working for both the system and hardware." Office action, page 5, ¶ 20.

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In Asselin, if a replacement driver has an error or incompatibility, then the replacement driver is unloaded. Column 4, lines 36-37. But, the original driver remains connected or is reconnected when the rejected replacement driver is unloaded. *See* Figure 4, blocks 63, 64, and "end". Thus, under these conditions, a different driver is not installed. In contrast, when the replacement driver is compatible and without error, Asselin's replacement driver replaces the original driver. *See* Figure 4. So, Asselin teaches an either/or situation regarding installing a replacement driver; either the driver is error free and it is installed or it is not and the replacement driver is unloaded. In other words, in view of Asselin, where an incorrect replacement driver is unloaded there is no subsequent installation. In this way, an unacceptable driver does not replace the original driver that is in operation.

Merkin's teachings do not alter the result of Asselin. That is, in Merkin the developers of the device driver program provide the device driver program and installation data profile on the same disk. *See* column 4, line 66-column 5, line 1; column 5, lines 51-57. This disk is inserted in a drive, where through an installation data profile, the user may be able to select a target drive or path and drive for the device driver. Column 7, lines 3-27. After selection of a target drive or target path, installation of the device driver continues, which includes copying the device driver into the path selected by the user, or to a default location as indicated by the installation data profile. *Id.* In view of Asselin, if the driver is incompatible or has an error, the driver would not be installed. Thus, if there were a motivation for the teachings of the references to be combined, a driver program would not be installed when the program is not "correct". But, if the driver is "correct" then it would be installed without unloading. As such, it is respectfully submitted that *prima facie* obviousness has not been established over Merkin in view of Asselin. Reconsideration of the rejection is requested.

Independent claim 19 was rejected under 35 U.S.C. §103(a) as being unpatentable over Merkin in view of Asselin for the same reasons given with respect to claim 1. For at least the reasons given above, *prima facie* obviousness has not been established with respect to claim 19 and claims dependent thereon.

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Also, claim 19 calls for a placeholder software component. The incompatible or error ridden replacement driver of Asselin is not a placeholder. That is, the replacement driver would be installed but for an error or incompatibility. Thus, the function of all replacement drivers in Asselin is to replace the currently operating driver whether replacement actually occurs or not. The replacement drivers do not act as a place holder for a driver that is later installed. Accordingly, for this additional reason, *prima facie* obviousness has not been established for claim 19 or its dependent claim.

With respect to dependent claims 2 and 3, if Merkin fails to disclose receiving the identification of a first system element that is not of the plurality of available system elements, it is not clear how Merkin can teach an indication of the location of a first system element. Also, in Merkin the target path is where the device driver program is located after being copied during installation; therefore, it is not the location of the driver before installation.

Independent claim 6 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over Merkin alone.
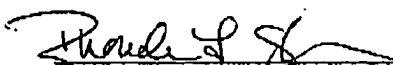
Claim 6 calls for installing a first device driver, deinstalling the first device driver, and installing an operative device driver which enables a newly-installed hardware device and the system to operate together. The examiner has failed to establish that Merkin alone installs a first device driver and deinstalls the first device driver.

In the Office action, a first installation data profile is alleged to disclose a first device driver. Office action, page 4, ¶ 12 and 13. When an installation data profile is successfully parsed, pseudo code is returned, which may be use during installation of a device driver. *See* column 6, lines 19-23; column 8, lines 28-42. However, if errors occurred during parsing, the memory *allocated* for the parse data is released. Column 8, lines 33-38. Because Merkin does not clearly install an installation data profile where errors occurred during parsing and deinstall that installation data profile, *prima facie* obviousness has not been established with respect to claim 6 or claims dependent thereon. As such, reconsideration of the rejection is requested.

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In view of the remarks herein, the application is believed to be in condition for allowance. The examiner's prompt action in accordance therewith is respectfully requested. The commissioner is authorized to charge any additional fees, including extension of time fees, or credit any overpayment to Deposit Account No. 20-1504 (ITL.0783US).

Respectfully submitted,

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Rhonda L. Sheldon, Reg. No. 50,457
TROP, PRUNER & HU, P.C.
8554 Katy Freeway, Suite 100
Houston, TX 77024
713/468-8880 [Phone]
713/468-8883 [Fax]

Customer No.: 21906

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